

Attorney's Docket No.98-2006
Client's Docket No. CIL995

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS INTERFERENCES**

Re Patent Application of)
ARIZONA HALL and)
JOHN H. HALL)
Serial No.: 09/383,669)
Filed: 8/26/1999)
For: TRUCKBOX COVER AND SIDEWALL)
EXTENSION ATTACHMENT)
Examiner: P. Engle)
Group Art Unit: 3612)
Attorney: Ivar M. Kaardal)
Deposit Account No. 11-0020)

**Assistant Commissioner for Patents
Washington, D.C. 20231**

ATTENTION: Board of Patent Appeals and Interferences

APPELLANT'S BRIEF (37 CFR §1.192)

This brief is in furtherance of the Notice of Appeal, filed in this case on May 9, 2001.

The fees required under Section 1.17(c), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief is transmitted in triplicate. (37 CFR section 1.192(a))

This brief contains these items under the following headings, and in the order set forth below (37 CFR §1.192(c)):

- I. REAL PARTY INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF INVENTION
- VI. ISSUES
- VII. GROUPING OF CLAIMS
- VIII. ARGUMENTS
- IX. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

The final page of this brief bears the practitioner's signature.

I. REAL PARTIES IN INTEREST (37 CFR §1.192(c)(1))

The real party in interest in this appeal are Arizona Hall and John H. Hall, inventors of the claimed invention and applicants for the application involved in the appeal.

II. RELATED APPEALS AND INTERFERENCES (37 CFR §1.192(c)(2))

There are no other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS (37 CFR §1.192(c)(3))

On May 9, 2001 appellant appealed from the final rejection of claim 8. Cancellation of claims 1 through 7 was requested in the "Response under 1.116" filed February 8, 2001, and the entry of the cancellation of claims 1 through 7 upon the filing of this Appeal Brief was indicated entered in the Advisory Action mailed June 6, 2001.

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 8 claims

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: claims 1 through 7
2. Claims withdrawn from consideration but not canceled: (none)
3. Claims pending: claim 8
4. Claims allowed: (none)
5. Claims rejected: claim 8

C. CLAIM ON APPEAL

The claim on appeal is: claim 8

IV. STATUS OF AMENDMENTS (37 CFR §1.192(c)(4))

In the Advisory Action mailed June 6, 2001 the Examiner indicated that the amendments to application requested in the "Response under 1.116" filed February 8, 2001 would be entered upon filing of this appeal brief. Cancellation of claims 1 through 7 was requested in the "Response under 1.116", but no amendment of the language of claim 8 was requested.

V. SUMMARY OF INVENTION (37 CFR §1.192(c)(5))

Appellant's invention generally comprises first and second wall members that are dimensioned to cover the box of a pickup truck. A flange or flap member extends along the length and from a longitudinal edge of the first wall member. A first telescoping brace member is connected to the truckbox and to the first wall member, and a second telescoping brace member is connected to the truckbox and to the second wall member. The first wall member is hingedly attached to a first side wall of the box of the pickup truck, and the second wall member is hingedly attached to a second side wall of the box of the pickup truck with a lockable latch member being disposed in the second wall member and having a latch portion capable of engaging the flap member to securely lock the two wall members in a closed position upon the box of the pickup truck.

VI. ISSUES (37 CFR §1.192(c)(6))

Claim 8 (along with claims 4 through 7 now cancelled) was finally rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat No. 4,531,775, issued on July 30, 1985 to Beals (hereinafter "Beals") as modified by U.S. Pat. No. 3,069,199, issued on December 18, 1962 to Reardon et al. (hereinafter "Reardon"), and further in view of U.S. Pat. No. 5,183,309 issued February 2, 1993 to Jordan (hereinafter "Jordan").

VII. GROUPING OF CLAIMS (37 CFR §1.192(c)(7))

Review of the rejection of claim 8 alone is sought in this appeal.

A. THE EXAMINER'S RATIONALE

The Examiner's rationale for rejecting claim 8 as being unpatentable over Beals as modified by Reardon and further in view of Jordan was set forth in the final Office Action:

Beals discloses a truck box cover and side wall extension comprising: a first wall member (15) having a bottom side which is hingedly attached (31) to a first side wall (3) of a pickup truck box; a second wall member (17) having a bottom side and being hingedly attached (31) to a second side wall (3) of a pickup truck box; a means for bracing said first and second wall members in upright positions (49) upon respective side walls of a pickup truck box, said means for bracing being located near a first end portion of each of the wall members; and a means for lockably latching said first and second wall members (69) together in a closed position; wherein the first and second wall members partially overlap a front wall (5) and a tailgate (7) of a truck box when in the closed position (column 3, lines 25-28), said means for locking being located near a second end portion of each of the wall members.

Beals does not disclose a flap extending from a first longitudinal edge on the first wall capable of extending underneath a first longitudinal edge of the second wall member. Beals does disclose that the longitudinal edges of the first and second wall can be beveled in an overlapping configuration to assist in the locking of the panels (column 4, lines 33-37).

Reardon et al. disclose a truck box cover and side wall extension with a first wall member (15) having a flap (35) extending from the first longitudinal edge capable of extending beneath the first longitudinal edge of the second wall member (17).

Beals and Reardon et al. are analogous art because they are from the same field of endeavor, i.e., truck box cover and side wall extension members.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include a flap on the first wall member to overlap the second wall member as taught by Reardon et al. as it would merely involve the alternate utilization of an equivalent overlapping means to achieve the same exact function.

Beals as modified disclose a truck box cover and side wall extension member with the limitations of claims 1 and 3 and a bracing means including telescoping brace members (50) wherein one end of the telescoping brace member is attached to the side wall member (15 or 17) and the other end of the brace member (50) is attached to the front wall member (5); wherein the telescoping brace member includes an fluid-filled cylinder and a piston movably extended in the cylinder (column 3, lines 62-64). A fluid is defined by Merriam-Webster's 10th Edition Dictionary as "a substance (as a liquid or gas) tending to flow or conform to the outline of its container". Therefore the fluid in the fluid-filled cylinder could be air.

Beals as modified does not disclose that the bracing means

includes brackets attached to the first and second wall members and a front wall of the cargo box to attach the telescoping brace member to the wall members and the front wall of the cargo box.

Jordan teaches truck box cover member with a brace member (100) attached to the bottom side of the first wall member (64) by means of a bracket (102). Jordan also teaches attaching the other end of the brace member (100) by means of a bracket (104).

Beals and Jordan are analogous art because they are from the same field of endeavor, i.e. truck box cover members.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to include brackets for attaching the brace member to the side wall members and the front wall of the cargo box as taught by Jordan.

The motivation would have been to allow the correct operation of the support mechanism as taught by Jordan (column 5, lines 12-13).

B. ARGUMENT

1. THE KEY REQUIREMENTS OF CLAIM 8

Applicant's claim 8 requires, in part, "a flap member securely attached to said first wall member and extending along and outwardly from a first longitudinal edge of said first wall member" and "said flap member being thin and flat and having a width capable of extending partially beneath a first longitudinal edge of said second wall member

when both said first and second wall members are in a closed position upon a truck box".

2. THE BENEFITS OF THE CLAIMED STRUCTURE

The language of applicant's claim 8 requires a flap member that is secured to the first wall member and extends from an edge of the first wall member such that it is capable of extending *beneath* the edge of the second wall member when the first and second wall members are in the closed position. The flap member element of the claimed invention, and in particular the relationship of the flap member to the edges of the first and second wall member, is deemed significant to the function and performance of the invention, especially when the first and second wall members are in the closed position with respect to each other as illustrated in Figure 2 of the subject patent application. The claimed relationship permits the flap member to catch or intercept rain or other moisture that penetrates between the edges of the first and second wall members and blocks the moisture from direct movement into the box of the vehicle. Moreover, moisture blocked by the flap member of the claimed invention will tend to move toward the rear of the first and second wall members during movement of the vehicle in a forward direction so that the moisture may be guided over the rear wall or tailgate of the vehicle box rather than entering the box. Of further significance is that the positioning of the flap member below the wall

members leaves the upper surfaces of the wall members smooth (especially at the joint therebetween) and thus does not contribute to or facilitate movement of moisture between the edges of the wall members, a condition that is submitted to be a potential problem of some of the prior art structures discussed below. Also, the flap member structure of the claimed invention is submitted to be more forgiving of insubstantial misalignments of the wall members that cause the meeting of the edges to be less snug due to, for example, flex of the body of the vehicle.

3. THE BEALS PATENT

Turning to the prior art patents relied upon by the Examiner in making the rejection, the Beals patent teaches a pair of panels having complementary beveled edges with a strip (element 95) that is lodged in between the beveled edges when the panels are in a closed configuration.

The Beals device thus relies upon pressure from the beveled edges applied to the strip to form a seal therebetween. It is submitted that any misalignment of the beveled edges or incomplete closure of the panels may not adequately compress the strip, and thereby may permit moisture to move between the beveled edges and strip as a result of the insufficient compression. Further, if the strip of the Beals teaching fails to prevent the movement of the moisture between the beveled edges, the moisture may then directly enter the box of the vehicle without being impeded by any further sealing structure. It is submitted that the

teaching of the Beals patent could only lead one of ordinary skill in the art to placing a sealing element *between* the edges of panels, and not to the positioning of a flap member *beneath* the edges of the panels when in a closed position, as required by applicant's claim 8.

4. THE REARDON PATENT

The Reardon patent relied upon in the rejection teaches a pair of cover panels with inwardly extending flanges 35 and 36 which each have an inner edge. The flange 36 of one of the cover panels overlaps over the flange 35 of the other of the cover panels (element 26). However, the relationship disclosed in Reardon forces one of the flanges (and its inner edge 30) to extend above and protrude from the plane of the top surfaces of the cover panels, and it is submitted that the protruding inner edge of the flange is more likely to catch moisture or precipitation flowing across the top surface of the cover panel and could actually direct that moisture between the inner edges. Even though the flanges of Reardon's cover panels extend longitudinally on the vehicle, the protruding inner edge of the upper flange is likely to catch air and moisture in any cross wind or driving rain that does not coincide with the direction of travel of the vehicle, and force it through the joint between the cover panels. The Reardon patent teaches an upper sealing strip 51 for creating a seal between the inner edges for blocking this flow of moisture, but again this structure relies upon sufficient compression of the strip 51 for creating

an adequate seal, and misalignments of the flanges 35 and 36 could let moisture through, and once moisture has passed the strip 51 there is no structure for stopping the moisture from reaching the interior of the box of the vehicle. It is therefore submitted that the Reardon patent could only lead one to a sealing structure that is located *above* the cover panels, and would not lead one of ordinary skill in the art to the flap member extending from a first wall member to a position beneath a second wall member as required by applicant's claim 8.

5. THE JORDAN PATENT

The Jordan patent is not relied upon in the rejection for teaching any structure related to applicant's flap member, and by virtue of its side panels being pivotally mounted at the center of the tonneau assembly, does not have inner edges of the side panels coming together to form a seal.

6. CONCLUSION

It is therefore submitted that the allegedly obvious combination of the teachings of the Beals and Reardon patents, even if suggested by the prior art, could not lead one skilled in the art to the structure of applicant's claim 8 because neither of the references, alone or in combination, show the structure required by claim 8, and in fact show structure that would lead one away from the claimed invention.

IX. APPENDIX OF CLAIMS (37 CFR §1.192(c)(9))

The text of the claim involved in the appeal is as follows:

8. A truckbox cover and sidewall extension attachment comprising:
 - a first wall member having a bottom side, a flap member securely attached to said first wall member and extending along and outwardly from a first longitudinal edge of said first wall member, said first wall member being hingedly attached to a first sidewall of a pickup truck box;
 - a second wall member having a bottom side and being hingedly attached to a second sidewall of a pickup truck box, said first and second wall members partially overlapping a front wall and a tailgate of a truck box when said wall members are in a closed position, said flap member being thin and flat and having a width capable of extending partially beneath a first longitudinal edge of said second wall member when both said first and second wall members are in a closed position upon a truck box;
 - a means for bracing said first and second wall members in upright positions upon respective sidewalls of a pickup truck box for essentially extending upwardly the sidewalls of a pickup truck box, and including a plurality of brackets securely attached to said first and second wall members and to a front wall of a truck box, and further including a pair of telescoping brace members securely mounted to said brackets, one of said brackets being securely attached to said bottom side of said first

wall member and another one of said brackets being securely attached to said bottom side of said second wall member, one of said telescoping brace members having an end hingedly connected to said bracket which is securely attached to said first wall member, and the other of said telescoping brace members having an end hingedly connected to said bracket which is securely attached to said second wall member, each of said telescoping brace members including an air-filled cylinder and a piston movably extended in said cylinder for essentially locking said first and second wall members in upright positions upon a truckbox; said means for bracing being positioned near a first end portion of each of the wall members; and

a means for lockably latching said first and second walls members together in a closed position, said means for locking being positioned near a second end portion of each of the wall members.

X. SUMMARY

For the foregoing reasons, appellant believes that the Examiner's rejection of claim 8 was erroneous, and reversal of the rejection is respectfully requested.

Respectfully submitted,



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